

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION**

JAMES H. STERN

PLAINTIFF

VS.

CIVIL ACTION NO. 2:08cv33-KS-MTP

CHRISTOPHER EPPS, *et al.*

DEFENDANTS

ORDER DENYING MOTION FOR DEFAULT JUDGMENT

THIS MATTER is before the court on the Plaintiff's Motion [143] for Default Judgment against Keefe Commissary Network. Having considered the Plaintiff's motion, along with documents made a part of the record of this case and the applicable law, the court finds that the motion should be DENIED.

In his Motion [143], Plaintiff asks the court to enter a default judgment against Defendant Keefe Commissary Network, claiming it has been served with process and has failed to respond. The docket reflects that Keefe Commissary Network, Cecil McCory, was served with process on January 23, 2009. *See* Return [138]. On February 12, 2009, GT Enterprises of Mississippi, Inc. filed its answer, noting that Cecil McCory is the registered agent for GT Enterprises of Mississippi, Inc., and not Keefe Commissary Network. *See* [142] at n.1. Accordingly, Keefe Commissary Network has not yet been properly served with process, and, therefore, the entry of a default judgment is not appropriate under the circumstances of this case as this Defendant has not "failed to plead or otherwise defend" in this action. *See* Fed. R. Civ. P. 55(a). The court has directed the issuance of service of process for Keefe at the address provided by the Mississippi Secretary of State. *See* Order [144].

IT IS, THEREFORE, ORDERED that the Plaintiff's Motion [143] for Default Judgment against Defendant Keefe Commissary Network is DENIED.

SO ORDERED this the 23rd day of February, 2009.

s/ Michael T. Parker

United States Magistrate Judge